

EXHIBIT 24

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3 IN RE: : MDL NO.:
 JOHNSON & JOHNSON TALCUM : 16-2738 (MAS)(RLS)
4 POWDER PRODUCTS :
 MARKETING, SALES :
5 PRACTICES, AND PRODUCTS :
 LIABILITY LITIGATION :

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Remote videotaped deposition of PAUL
HESS, via Zoom video conference, conducted at
the location of the witness in Atlanta,
Georgia, taken on the above date, beginning at
approximately 9:06 a.m., before Jessica M.
Gericke, RPR, CCR-NJ, and Notary Public in and
for Delaware, New Jersey, and Pennsylvania.

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<p>Page 2</p> <p>1 APPEARANCES VIA ZOOM VIDEO CONFERENCE: 2 BOVIS, KYLE, BURCH & MEDLIN, LLC BY: ERIC LUDWIG, ESQUIRE 3 200 Ashford Center North Suite 500 4 Atlanta, GA 30338-2668 678-338-3925 5 eludwig@boviskyle.com (Present with Witness) 6 Counsel for Deponent and Materials 7 Analytical Services 8 BEASLEY, ALLEN, CROW, METHVIN, 9 PORTIS & MILES, P.C. BY: P. LEIGH O'DELL, ESQUIRE 10 218 Commerce Street Montgomery, AL 36104 11 334-269-2343 leigh.odell@beasleyallen.com 12 (Present with Witness) 13 Counsel for Plaintiff Steering Committee 14 COHEN, PLACITELLA & ROTH 15 BY: CHRISTOPHER M. PLACITELLA, ESQUIRE DREW M. RENZI, ESQUIRE 16 127 Maple Avenue Red Bank, NJ 07701 17 732-747-9003 cplacitella@cpirlaw.com 18 Counsel for Plaintiff Steering Committee 19 20 21 22 23 24 25</p>	<p>Page 4</p> <p>1 APPEARANCES (continued): 2 ALSO PRESENT: 3 SPECIAL MASTER JOEL SCHNEIDER 4 CAROLIN De La ROSA, VIDEOGRAPHER 5 SHU-CHUN SU, PH.D. 6 - - - 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 3</p> <p>1 APPEARANCES (continued): 2 ASHCRAFT & GEREL, LLP BY: MICHELLE A. PARFITT, ESQUIRE 3 1824 K Street NW Washington, DC 20006 4 202-669-0032 mparfitt@ashercraftlaw.com 5 Counsel for Plaintiff Steering Committee 6 REILLY, McDEVITT & HENRICH, P.C. 7 BY: BRANDY L. HARRIS, ESQUIRE 8 3 Executive Campus Suite 310 9 Cherry Hill, NJ 08002 856-317-7180 10 bharris@rmh-law.com 11 Counsel for Personal Care Products Council 12 KING SPALDING, LLP 13 BY: MORTON D. DUBIN, II, ESQUIRE KEVIN HYNES, ESQUIRE 14 JAKE KEESTER, ESQUIRE 1185 Avenue of the Americas 15 34th Floor New York, NY 10036 16 212-790-5343 mdubin@kslaw.com 17 Counsel for Defendant Johnson & Johnson 18 FAEGRE DRINKER BIDDLE & REATH LLP 19 BY: SUSAN M. SHARKO, ESQUIRE 20 600 Campus Drive Florham Park, NJ 07932 21 973-549-7000 susan.sharko@faegredrinker.com 22 Counsel for Defendant Johnson & Johnson 23 24 - - - 25</p>	<p>Page 5</p> <p>1 INDEX 2 WITNESS NAME PAGE 3 Paul Hess 4 By Mr. Dubin 6 5 6 - - - 7 8 EXHIBITS 9 NO. DESCRIPTION PAGE 10 1 Resume of Paul M. Hess 8 11 2 MAS Report, dated 20 February 24, 2020 12 3 MAS Report, dated February 22 13 1, 2019 14 4 Hess Slide 2 46 15 5 MAS Report, dated September 58 16 16, 2020 17 6 MAS report, dated February 64 17 24, 2020 18 7 Declaration of William 69 Longo, Ph.D. 19 8 Hess Slide 20 70 20 9 Hess Slide 22 74 21 10 Hess Slide 24 76 22 11 Hess Slide 25 81 23 12 J3 Resources Inc. Report, 83 24 dated July 13, 2018 25</p>

<p style="text-align: right;">Page 54</p> <p>1 MR. LUDWIG: Same objection. 2 That is exactly what the Court 3 ruled upon. So objection. 4 MR. DUBIN: No. Those are the 5 reports at issue, which the Court said we 6 could ask about. 7 MS. O'DELL: And if you would 8 like to ask Mr. Hess about specific reports, 9 he is here and prepared to respond to your 10 questions, but asking for expert opinion is 11 beyond the scope of what Judge Schneider 12 established for this deposition and we'll 13 instruct the witness not to answer. 14 MR. LUDWIG: I instruct the 15 witness not to answer that question. 16 BY MR. DUBIN: 17 Q. In your reports identifying 18 chrysotile in Johnson & Johnson, what color 19 are the particles that you're calling 20 chrysotile typically in parallel? 21 MR. LUDWIG: Objection to form. 22 THE WITNESS: The colors that I 23 utilize to determine the wavelength are at the 24 edge of the particle and not in the center. 25 BY MR. DUBIN:</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. DUBIN: All right. Let's 2 take this down. We'll come back to it when we 3 show your reports. 4 BY MR. DUBIN: 5 Q. What color -- what is the refractive 6 index of talc? 7 A. It has wide -- a large 8 birefringence, but normally it will be 9 somewhere in the range of around 1.540 to 10 1.605, based on the experience of what I have 11 seen. 12 Q. How about a talc plate, a flat talc 13 plate? What is -- what is the refractive 14 index of a talc plate? 15 MS. O'DELL: Object to the 16 form. 17 THE WITNESS: I don't believe 18 the talc plate has any birefringence, but the 19 edges that I have seen have been blue in 1.55, 20 and have been yellowish in 1.605. 21 BY MR. DUBIN: 22 Q. Did the CSDS colors associated with 23 talc itself in 1.550 oil include the color 24 red? 25 MS. O'DELL: Would you repeat</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Okay. What color are the particles? 2 MS. O'DELL: Objection to the 3 form. 4 What particle? What -- 5 BY MR. DUBIN: 6 Q. The particle that you're calling 7 chrysotile in the reports that you're talking 8 about today? 9 MR. LUDWIG: Is there a 10 specific report you want to show him? This 11 right here, it looks like an exhibit created 12 by defense counsel. So that's not -- he is 13 not here to opine about this exhibit that 14 looks like a PowerPoint by someone else. 15 This is not a -- 16 MR. DUBIN: This is enough 17 speaking objections. You can make your 18 objections if you want to make your 19 objections. If you want to instruct your 20 witness not to answer the question, then you 21 can do that, but no more speaking objections. 22 It's gone way too far. 23 MR. LUDWIG: Based on the scope 24 that the Judge had lined out, I am instructing 25 him not to answer that question.</p>	<p style="text-align: right;">Page 57</p> <p>1 the question? I missed the first part. 2 BY MR. DUBIN: 3 Q. Do the central stop dispersion 4 staining colors of talc plates themselves in 5 1.550 oil include the color red? 6 MS. O'DELL: Object to the 7 form. 8 MR. LUDWIG: Same objection as 9 before. 10 I instruct you not to answer. 11 That's -- that calls for an 12 expert opinion. 13 MR. DUBIN: I am asking his 14 understanding and it relates to this work that 15 he is doing. 16 BY MR. DUBIN: 17 Q. Did it -- does it include red? 18 MS. O'DELL: If you have a 19 specific particle you would like to ask him 20 about, that's within the scope of the order, 21 but to ask it in isolation is beyond the scope 22 and seeks an expert opinion. 23 MR. DUBIN: Fine -- 24 MR. LUDWIG: Join. 25 MR. DUBIN: -- when you get to</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. Okay. As a PLM analyst, how do you 2 tell if an image is appropriately illuminated? 3 A. Well, if the scope had capability, 4 we use Kohler illumination, but the best way 5 to get the most illumination out of any type 6 of scope is to have all the different parts 7 align and centered. 8 Q. Okay. And is it important for a PLM 9 analyst to be able to see all the particles in 10 the field of view clearly? 11 A. Through the ocular, yes. 12 Q. When you were doing your analysis on 13 the Olympus microscope and you were looking 14 for the colors of the particle, were you 15 typically doing that by assessing it through 16 the eyepiece of the microscope or by looking 17 at the -- or looking at a screen? 18 A. Through the microscope. 19 Q. And did the -- what is white 20 balancing? 21 A. Basically, it takes the program that 22 you're using for the graphics and allows it to 23 adjust to the pure white light. 24 Q. And did the Olympus come with any 25 filters, like a daylight filter or blue</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. LUDWIG: Is there a 2 specific report you're asking about? 3 MR. DUBIN: There are a set of 4 reports that are done on an Olympus 5 microscope. There are then a set of reports 6 that are done on the Leica microscope. 7 I am asking about the ones he 8 did on Olympus. If we want -- if we need to 9 call up an example, I am happy to do that. So 10 we'll call up an example of that. 11 We can go to the Zimmerman 12 report and that will be exhibit 6 and so let's 13 make that exhibit 6. For internal reference 14 it's CX-6. It's -- this is an image from the 15 February 24, 2020 analysis of Johnson & 16 Johnson. We can put it in chat and call it 17 up. 18 (Exhibit 6 marked for 19 identification.) 20 BY MR. DUBIN: 21 Q. Okay. And I want to look at an 22 image there. We can go to, I guess, 39 of the 23 report. I am just going to -- okay. For 24 example, this was in 2020. 25 So this would be on the Olympus</p>
<p style="text-align: right;">Page 63</p> <p>1 filter, to perform white balancing with? 2 A. It had a -- we had a blue diffusion, 3 but there was nothing in -- to do white 4 balance, you have to have a white background. 5 Q. So it came with a blue light or 6 daylight filter? 7 A. I would just remove the diffuser. 8 Q. I am sorry. I don't understand. 9 Would -- did the microscope 10 come with or did you have a blue light or 11 daylight filter on the Olympus? 12 A. I don't recall. 13 Q. Do you know whether you used a blue 14 light or a daylight filter when performing 15 analysis for chrysotile in Johnson & Johnson 16 with the Olympus microscope? 17 MR. LUDWIG: Objection to form. 18 Is there are a specific test 19 you're asking about? It's my understanding 20 there was lots of tests. 21 So I am going to object to the 22 form. Same scope issue. 23 MR. DUBIN: It's the reports at 24 issue. I'm asking about his microscope setup 25 for the reports at issue.</p>	<p style="text-align: right;">Page 65</p> <p>1 microscope, correct? 2 A. That is correct. 3 Q. Okay. So now we have an image. 4 We're talking about a specific report. 5 When you were doing these 6 analyses for Johnson & Johnson, were you using 7 a blue light or daylight filter? 8 A. I don't recall if we ever had any 9 specific daylight or blue filters for the 10 Olympus. The only thing blue was the 11 diffuser. 12 MS. O'DELL: What is your other 13 report? 14 MR. DUBIN: So this is -- this 15 was page 36, I think. 16 BY MR. DUBIN: 17 Q. All right. We'll come back to that 18 in a bit. 19 Do you know what the purpose is 20 of a blue light or a daylight filter? 21 MS. O'DELL: Object to the 22 form. 23 MR. LUDWIG: Object to the 24 form, yeah. It calls for expert testimony. 25 I instruct you not to answer</p>

<p style="text-align: right;">Page 66</p> <p>1 that question.</p> <p>2 MR. DUBIN: You're instructing</p> <p>3 him not to answer? I am asking him about the</p> <p>4 work he did, how he set up his microscope, and</p> <p>5 what filters he was using and you're</p> <p>6 instructing him not to answer that?</p> <p>7 MS. O'DELL: That was not your</p> <p>8 question.</p> <p>9 MR. DUBIN: Well, I just asked</p> <p>10 him about whether it had a blue light filter</p> <p>11 and whether he was using it and I am asking</p> <p>12 him now what his understanding of the purpose</p> <p>13 of that type of filter is. Are you</p> <p>14 instructing him not to answer that question?</p> <p>15 MS. O'DELL: He is here to --</p> <p>16 he is here to testify to what he did, which</p> <p>17 he -- the equipment he used, which he has been</p> <p>18 responding to those questions.</p> <p>19 Understanding about certain</p> <p>20 methodologies, giving his opinion about</p> <p>21 certain methodologies is beyond the scope of</p> <p>22 what Judge Schneider has ordered.</p> <p>23 MR. DUBIN: Are you instructing</p> <p>24 him not to answer --</p> <p>25 MR. LUDWIG: The objection --</p>	<p style="text-align: right;">Page 68</p> <p>1 get there. Okay. Thank you.</p> <p>2 BY MR. DUBIN:</p> <p>3 Q. Do you know how looking at an image</p> <p>4 to tell whether a blue light filter or</p> <p>5 daylight filter is being used?</p> <p>6 A. I don't recall ever dealing with</p> <p>7 them.</p> <p>8 Q. Okay. How was focus adjusted on the</p> <p>9 Olympus microscope?</p> <p>10 A. Focus would be adjusted using the</p> <p>11 fine focus knob.</p> <p>12 Q. Okay. I want to show you another</p> <p>13 image and ask you if you can tell me whether a</p> <p>14 blue light filter is being used or not.</p> <p>15 MR. DUBIN: It will be</p> <p>16 exhibit -- what number are we on? We are now</p> <p>17 on six?</p> <p>18 THE COURT REPORTER: Seven.</p> <p>19 MR. DUBIN: And that is --</p> <p>20 THE COURT REPORTER: You're on</p> <p>21 exhibit 7, I believe.</p> <p>22 MR. DUBIN: Exhibit 7. Okay.</p> <p>23 That is CX-11A to call it up and if you could</p> <p>24 just go to page 22 of it and put it in chat.</p> <p>25 MS. O'DELL: Mr. Hess, just</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. DUBIN: -- a simple</p> <p>2 question about the purpose of a blue light</p> <p>3 filter? Are you instructing him not to</p> <p>4 answer?</p> <p>5 MR. LUDWIG: Yes.</p> <p>6 MR. DUBIN: Okay.</p> <p>7 MR. LUDWIG: I believe that is</p> <p>8 outside the scope of what the Judge just</p> <p>9 said --</p> <p>10 MR. DUBIN: I really don't --</p> <p>11 if you instruct him not to answer, I don't</p> <p>12 need to hear a long speaking objection in</p> <p>13 addition.</p> <p>14 MR. LUDWIG: Sure. Fair</p> <p>15 enough.</p> <p>16 MS. O'DELL: And just for the</p> <p>17 record, Morty -- and I think it's just a page</p> <p>18 number issue -- you identified what's on the</p> <p>19 screen as page 36 of the report. I am</p> <p>20 assuming you mean 36 -- page 36 in the PDF?</p> <p>21 MR. KEESTER: It's 39 in the</p> <p>22 PDF.</p> <p>23 MR. DUBIN: Thirty-nine.</p> <p>24 Sorry.</p> <p>25 MS. O'DELL: Okay. Let me just</p>	<p style="text-align: right;">Page 69</p> <p>1 give us a moment to see what's going to be put</p> <p>2 on the screen and what the report is.</p> <p>3 (Exhibit 7 marked for</p> <p>4 identification.)</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. Page 22, can you tell me if a blue</p> <p>7 light or daylight filter is being used on this</p> <p>8 image?</p> <p>9 MR. LUDWIG: Objection --</p> <p>10 objection. This, once again, calls for expert</p> <p>11 opinion, which is outside the scope of the</p> <p>12 purpose of this deposition as instructed by</p> <p>13 the Judge.</p> <p>14 MR. DUBIN: Are you instructing</p> <p>15 him not to answer the question?</p> <p>16 MR. LUDWIG: I am instructing</p> <p>17 him not to answer the question.</p> <p>18 MS. O'DELL: Yes. This is not</p> <p>19 a document that's been disclosed in the MDL.</p> <p>20 It's a report for Dr. Longo. It's analysis of</p> <p>21 ceramic slip clay for something else that's</p> <p>22 not related and we object to the use of this</p> <p>23 exhibit.</p> <p>24 MR. DUBIN: Okay. Can we call</p> <p>25 up -- we'll make the next exhibit in order</p>

<p style="text-align: right;">Page 78</p> <p>1 asking him about his reports that are at issue 2 in this case and asking him what color that he 3 is calling particles and that is exactly in 4 the scope of the deposition. 5 So unless you're instructing 6 him not to answer that as well, my question 7 stands. 8 MR. LUDWIG: I instruct him not 9 to answer that question. 10 MR. DUBIN: Okay. So now 11 you're instructing the witness not to answer 12 questions even about the specific reports that 13 he was -- that we were permitted to depose him 14 on. 15 Is that my understanding? 16 MS. O'DELL: So would you 17 repeat your question, please? 18 MR. DUBIN: Oh, my goodness. 19 What color is the particle that you're calling 20 chrysotile here? 21 MR. LUDWIG: I am standing by 22 my objection. I am instructing him not to 23 answer. 24 It goes to -- you're asking him 25 to opine as to the color. The color is on the</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. We can zoom more in. 2 A. The center part of it is a golden 3 yellow, but I cannot determine the edges, 4 which is where I need to look. 5 Q. Okay. Well, we'll go over this edge 6 effect, but you can agree that this is not -- 7 this does not look like reference chrysotile, 8 correct? 9 MS. O'DELL: Object to the 10 form. 11 MR. LUDWIG: Same objection. 12 THE WITNESS: The center of the 13 particle is not what you would usually call. 14 BY MR. DUBIN: 15 Q. And -- sorry. And you see that 16 there are rounded structures in this image, 17 right? 18 A. There are. 19 Q. Those are talc? 20 A. Some may be. 21 Q. Are they the same color as the 22 particle that you're calling chrysotile? 23 MS. O'DELL: Object to the 24 form. 25 THE WITNESS: It is, but I --</p>
<p style="text-align: right;">Page 79</p> <p>1 screen and it is part of an expert report 2 prepared by MAS and you're taking it out of 3 context. 4 So I am going to instruct you 5 not to answer. 6 If you want to ask him how he 7 developed the color, that's what the Judge 8 said, but -- 9 MR. DUBIN: (Inaudible.) 10 MR. LUDWIG: -- his personal 11 involvement. 12 BY MR. DUBIN: 13 Q. You are the analyst who did this 14 work for the Zimmerman report and we can go 15 through your PLM -- the PLM sheets. 16 You did this analysis, right? 17 MR. LUDWIG: Okay. That's 18 fine. Let's do that. 19 BY MR. DUBIN: 20 Q. You did this analysis? These are 21 your PLM images, correct, Mr. Hess? 22 A. It is. 23 Q. So I'm asking you what color did you 24 assess this particle as? 25 A. Could you zoom in on the particle?</p>	<p style="text-align: right;">Page 81</p> <p>1 the other particle colors, without being able 2 to see the true edges of the particle in 3 question -- 4 BY MR. DUBIN: 5 Q. Okay. We'll talk about edges -- 6 MS. O'DELL: Excuse me, Morty. 7 I don't believe you could hear. He is not 8 finished with his answer. 9 BY MR. DUBIN: 10 Q. Go ahead. 11 A. -- I cannot comment. 12 Q. We'll talk about edges later. 13 Have you seen any PLM work of 14 Johnson & Johnson done by any other experts? 15 A. I don't recall. 16 MR. DUBIN: Okay. Let's put up 17 Hess slide 25 as exhibit 11. 18 (Exhibit 11 marked for 19 identification.) 20 BY MR. DUBIN: 21 Q. We're looking at images of PLM -- 22 and I will mark the entire report also from 23 Mr. Poye and from you -- both from on talcs. 24 Do you have any understanding 25 why the images look so different?</p>

<p style="text-align: right;">Page 94</p> <p>1 go back and forth between them if you need to.</p> <p>2 MR. DUBIN: Can we flip back to</p> <p>3 Valadez?</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. Do you see that the Zimmerman report</p> <p>6 image is more golden or orange?</p> <p>7 A. I do.</p> <p>8 Q. Do you know why that is?</p> <p>9 A. From the BH2, which is the Zimmerman</p> <p>10 report, we were on a tungsten lamp, and it was</p> <p>11 to the respect that we were dealing with extra</p> <p>12 yellows from the tungsten lamp.</p> <p>13 Q. So the tungsten lamp was changing</p> <p>14 the color of the particle then?</p> <p>15 MS. O'DELL: Object to the</p> <p>16 form.</p> <p>17 MR. LUDWIG: Object to form.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. Is that correct?</p> <p>20 MS. O'DELL: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: We felt it was</p> <p>23 adding more yellow to the image of what we</p> <p>24 were seeing and what we were documenting.</p> <p>25 BY MR. DUBIN:</p>	<p style="text-align: right;">Page 96</p> <p>1 your question was.</p> <p>2 MR. DUBIN: We can read the</p> <p>3 question back.</p> <p>4 THE COURT REPORTER: One</p> <p>5 moment.</p> <p>6 "QUESTION: And it wasn't just</p> <p>7 adding yellow. If we go back to the</p> <p>8 Zimmerman image, it was adding sort of</p> <p>9 darker golden colors or orange colors to</p> <p>10 the image, right?"</p> <p>11 MS. O'DELL: Object to the</p> <p>12 form.</p> <p>13 MR. LUDWIG: I am going to</p> <p>14 stand by my objection.</p> <p>15 MR. DUBIN: So you're not just</p> <p>16 objecting. You're instructing him not to</p> <p>17 answer that question. I need to understand</p> <p>18 that.</p> <p>19 MR. LUDWIG: Correct.</p> <p>20 MR. DUBIN: So if I ask him any</p> <p>21 questions trying to compare various images in</p> <p>22 his reports, are you going to instruct him not</p> <p>23 to answer that?</p> <p>24 MS. O'DELL: You can proceed</p> <p>25 with your deposition, Morty. It's no way</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Okay. And it wasn't just adding</p> <p>2 yellow. If we go back to the Zimmerman report</p> <p>3 image, it was adding sort of darker golden</p> <p>4 colors or orange colors to the image, right?</p> <p>5 MS. O'DELL: Object to form.</p> <p>6 MR. LUDWIG: Objection. This</p> <p>7 calls for an expert opinion.</p> <p>8 I will instruct you not to</p> <p>9 answer that one.</p> <p>10 MR. DUBIN: You're instructing</p> <p>11 him not to answer that question about the</p> <p>12 comparison between these two images?</p> <p>13 MR. LUDWIG: Correct. You're</p> <p>14 testifying and I am going to object to that</p> <p>15 one.</p> <p>16 MR. DUBIN: You're objecting</p> <p>17 and you're instructing your witness not to</p> <p>18 answer a question about the impact of lighting</p> <p>19 on his images in the reports at issue in this</p> <p>20 deposition and you're instructing him not to</p> <p>21 answer.</p> <p>22 Is that my understanding?</p> <p>23 MR. LUDWIG: Could you -- let</p> <p>24 me hear the question again because I think</p> <p>25 you -- what you said was different than what</p>	<p style="text-align: right;">Page 97</p> <p>1 to -- to respond to that. I mean --</p> <p>2 MR. DUBIN: Okay. I just --</p> <p>3 we're obviously going to have to deal with</p> <p>4 this after the end of the questioning today,</p> <p>5 but we'll proceed.</p> <p>6 MS. O'DELL: I am not finished.</p> <p>7 MR. DUBIN: Okay.</p> <p>8 MS. O'DELL: Stop interrupting,</p> <p>9 please. If you ask him questions about the</p> <p>10 image and the work that he did, he is</p> <p>11 available to answer your question. He is not</p> <p>12 here to offer expert opinion. It has been</p> <p>13 stated numerous times.</p> <p>14 MR. DUBIN: I am asking him</p> <p>15 directly about his images right now. So --</p> <p>16 and he is still being instructed not to</p> <p>17 answer.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. So, again, I am asking you a</p> <p>20 question about this image.</p> <p>21 The tungsten lighting is not</p> <p>22 just adding more yellow; it's adding golden</p> <p>23 colors and more orange color to the images,</p> <p>24 right? Is that correct?</p> <p>25 MR. LUDWIG: Object.</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 110</p> <p>1 opinion and so --</p> <p>2 MR. DUBIN: Are you instructing</p> <p>3 him not to answer?</p> <p>4 MR. LUDWIG: I am instructing</p> <p>5 him not to answer for the reasons stated</p> <p>6 before.</p> <p>7 MR. DUBIN: Okay. Let's go</p> <p>8 to -- make the next exhibit slide 43.</p> <p>9 MR. KEESTER: I'm sorry, Morty.</p> <p>10 That was 43?</p> <p>11 MR. DUBIN: Yeah, and that will</p> <p>12 be exhibit 17.</p> <p>13 (Exhibit 17 marked for</p> <p>14 identification.)</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. The number -- the wavelength of</p> <p>17 light that you assigned to this particle on</p> <p>18 the left that you're calling chrysotile in</p> <p>19 Johnson & Johnson, you are saying that it is</p> <p>20 even more purple than standard reference</p> <p>21 chrysotile depicted on the right, correct?</p> <p>22 MS. O'DELL: Objection.</p> <p>23 This is an incomplete depiction</p> <p>24 of what's being examined. It is including</p> <p>25 images that are not Dr. -- Mr. Hess', excuse</p>	<p style="text-align: right;">Page 112</p> <p>1 to an ISO record for chrysotile and that is</p> <p>2 beyond the scope of this deposition.</p> <p>3 That's -- that is --</p> <p>4 MR. DUBIN: Are you instructing</p> <p>5 him not to answer?</p> <p>6 MS. O'DELL: Let me finish.</p> <p>7 I'm sorry. Let me finish. I stuttered there.</p> <p>8 Judge Schneider was very clear</p> <p>9 that he is going to be asked about his work</p> <p>10 and not a comparison of his work to others and</p> <p>11 that is expert opinion and that's why we're</p> <p>12 instructing him not to answer.</p> <p>13 MR. DUBIN: Okay. So you're</p> <p>14 instructing him not to answer?</p> <p>15 MR. LUDWIG: Correct.</p> <p>16 MR. DUBIN: Okay.</p> <p>17 BY MR. DUBIN:</p> <p>18 Q. I want to make sure and let me raise</p> <p>19 the question.</p> <p>20 As a fact, factually, you</p> <p>21 assigned a darker purple color to that</p> <p>22 particle on the left than standard reference</p> <p>23 chrysotile, correct?</p> <p>24 MS. O'DELL: Objection; that is</p> <p>25 the same objection, and I just also object to</p>
<p style="text-align: right;">Page 111</p> <p>1 me, and it is an inappropriate examination of</p> <p>2 this witness, who is a fact witness, and seeks</p> <p>3 expert opinion, and we to object to it.</p> <p>4 MR. DUBIN: First off, I don't</p> <p>5 understand how you can say every time that he</p> <p>6 is a fact witness and not an expert. He is</p> <p>7 here to be deposed about his polarized light</p> <p>8 microscopy work. There is no way to depose</p> <p>9 someone about their polarized light microscopy</p> <p>10 work without asking them questions that are</p> <p>11 technical in nature.</p> <p>12 And so if your objection is</p> <p>13 that every time I ask him for something about</p> <p>14 his conclusions, it's an expert opinion, then</p> <p>15 you are essentially shutting down this</p> <p>16 deposition. It's --</p> <p>17 MS. O'DELL: That's not</p> <p>18 correct. We're asking -- we have not</p> <p>19 instructed Mr. Hess to not respond to</p> <p>20 questions that are technical. We have</p> <p>21 instructed him not to give expert opinion</p> <p>22 because he is here as a fact witness as you</p> <p>23 know and as the Special Master has ruled.</p> <p>24 And this seeks a comparison</p> <p>25 between the photomicrograph that Mr. Hess took</p>	<p style="text-align: right;">Page 113</p> <p>1 use of this color chart without reference to</p> <p>2 the other charts from Dr. Su's tables that</p> <p>3 take into consideration the temperature and</p> <p>4 other aspects of the table. It's an</p> <p>5 incomplete hypothetical. He --</p> <p>6 MR. DUBIN: I am sorry. I</p> <p>7 don't think you understand the -- I don't</p> <p>8 think you understand how the analysis works.</p> <p>9 Because we already did the temperature of the</p> <p>10 lab when we figured out what nanometer of</p> <p>11 light he was calling the particle. So that is</p> <p>12 not a valid objection scientifically. Are you</p> <p>13 instructing him not to answer?</p> <p>14 MS. O'DELL: I am going to let</p> <p>15 Mr. Hess' counsel instruct him, but I have</p> <p>16 made my objection.</p> <p>17 MR. LUDWIG: I am instructing</p> <p>18 him not to answer.</p> <p>19 MR. PLACITELLA: I would just</p> <p>20 like to -- can you hear me? I would just like</p> <p>21 to add the following objection and I am trying</p> <p>22 to stay out of this.</p> <p>23 If you're taking a tiny, little</p> <p>24 piece of a big slide and then blowing -- and</p> <p>25 then sticking it next to a different slide,</p>

<p style="text-align: right;">Page 114</p> <p>1 there is no guarantee that this accurately 2 depicts what the actual slide looks like, 3 especially on a Zoom presentation. So that's 4 my concern to put on the record. 5 MR. DUBIN: Okay. And my -- 6 MR. PLACITELLA: Now I'll go 7 back to sleep. 8 MR. DUBIN: My response to that 9 is we're comparing the colors associated with 10 two different nanometers of light, which are 11 depicted accurately on the slide, and I 12 understand that you guys are instructing him 13 not to answer and okay. So we'll have to deal 14 with that later. 15 MR. PLACITELLA: No, no, but my 16 objection was beyond that. My objection was 17 how this was put together, who put the colors 18 on what piece of the photograph and, you know, 19 what someone is being asked to interpret over 20 Zoom; that's all. Now I will go back to 21 sleep. 22 MR. DUBIN: Yeah. Okay. 23 BY MR. DUBIN: 24 Q. So let's go back to the Valadez 25 report.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. How can we independently verify with 2 your report that that particle is purple 3 without actually being at your scope? 4 MS. O'DELL: Objection. 5 MR. LUDWIG: Objection; calls 6 for -- objection to form. 7 BY MR. DUBIN: 8 Q. You can respond. 9 A. So I do the documentation on the 10 pictures. 11 Q. But you're telling me that the 12 pictures don't show the purple. 13 So how can we independently -- 14 how can we verify that that particle, in fact, 15 has purple? 16 MS. O'DELL: Objection; 17 misstates his testimony. 18 MR. LUDWIG: Join. 19 THE WITNESS: It's documented 20 as part of the report. It's in the picture. 21 BY MR. DUBIN: 22 Q. So you're saying that purple is in 23 the picture. 24 So where is the purple? 25 MS. O'DELL: Objection;</p>
<p style="text-align: right;">Page 115</p> <p>1 Are you -- are you swearing 2 that particle as purple in -- 3 MS. O'DELL: Object to -- 4 THE COURT REPORTER: Please 5 repeat your question. 6 BY MR. DUBIN: 7 Q. Are you swearing that that particle 8 is purple, the one depicted in 001? 9 MR. LUDWIG: Objection to form. 10 THE WITNESS: No. The particle 11 itself interior-wise has yellow. I utilized 12 what I could find through the scope around the 13 edges or at the edge. 14 BY MR. DUBIN: 15 Q. So are you telling me that that 16 particle we're looking at is somehow entirely 17 surrounded with purple, but we just can't see 18 it? 19 MS. O'DELL: Objection to the 20 form; asked and answered. 21 MR. LUDWIG: Argumentative. 22 BY MR. DUBIN: 23 Q. You can respond. 24 A. Based on what I saw through the 25 microscope.</p>	<p style="text-align: right;">Page 117</p> <p>1 misstates his testimony. 2 BY MR. DUBIN: 3 Q. You can respond. 4 A. I make my determinations on what I 5 can see through the scope and it's represented 6 to the best that I can get it on the screen in 7 the picture. 8 Q. Okay. But can we verify that with 9 the picture? Can we verify that in some way? 10 A. Other than what's on the picture, 11 Counselor, I cannot speculate. 12 MR. LUDWIG: Do you need it 13 blown up? 14 MR. DUBIN: We can blow it up. 15 MR. PLACITELLA: There it is. 16 BY MR. DUBIN: 17 Q. Do you see purple or red on the talc 18 plates in this image? To the extent you're 19 claiming you see it on that particle, do you 20 see it on all the rounded talc plates? 21 A. On this image, I can just barely. 22 Q. On the rounded talc plates, right? 23 MR. LUDWIG: Listen to the 24 question. 25 BY MR. DUBIN:</p>

<p style="text-align: right;">Page 118</p> <p>1 Q. You can see those kind of edge 2 effects on the talc plates as well, right? 3 MS. O'DELL: I am -- the screen 4 is about ten feet away from Mr. Hess. I am 5 handing him the Valadez report on my computer 6 so he can see it more clearly. 7 BY MR. DUBIN: 8 Q. Do you see those same kind of edge 9 effects on all -- on the talc plates? 10 A. I can see parts, yes. 11 Q. But talc plates aren't purple in 12 1.560 oil, right, and they are not red, 13 correct? 14 MS. O'DELL: And if you need to 15 make it bigger or smaller, Mr. Hess, you can 16 just -- you can touch my screen. 17 BY MR. DUBIN: 18 Q. You can focus on any of these 19 rounded talc plates and you'll see the same 20 edge effects, right? 21 MS. O'DELL: Object to the 22 form. 23 THE WITNESS: Similar. 24 BY MR. DUBIN: 25 Q. So what refractive index number</p>	<p style="text-align: right;">Page 120</p> <p>1 A. At least my opinion of what I am 2 seeing not only on the dispersion staining, 3 but also on the appearance of the structure, 4 whether it shows fibrousity. 5 Q. You are basing your refractive 6 index -- 7 MS. O'DELL: Excuse me. Were 8 you finished with your answer? 9 THE WITNESS: It's based on 10 what I see through the scope and my 11 examination of the particle. 12 BY MR. DUBIN: 13 Q. You are basing your assessment of 14 the refractive index of this particle that 15 you're calling chrysotile based on edge 16 effects that are also present on the rounded 17 talc plates, correct? 18 MS. O'DELL: Objection; 19 misstates his testimony. 20 BY MR. DUBIN: 21 Q. You can respond. 22 A. I base it on what I see around the 23 particle itself. 24 Q. And those -- again, my question is, 25 what you're claiming -- the effect that you're</p>
<p style="text-align: right;">Page 119</p> <p>1 would you assign to any of the talc plates 2 that also have that edge effect? What would 3 you -- what is the refractive index of the 4 talc plates? 5 MS. O'DELL: Object to the 6 form; expert opinion. 7 MR. LUDWIG: This is an expert 8 opinion. I am going to instruct him not to 9 answer that one. 10 BY MR. DUBIN: 11 Q. Mr. Hess, you're basing your calling 12 this particle chrysotile on edge effects that 13 are also present on the talc plates 14 themselves; isn't that right? 15 MS. O'DELL: Objection; 16 misstates his testimony. 17 BY MR. DUBIN: 18 Q. You can respond. 19 MS. O'DELL: Objection; 20 misstates his testimony. 21 MR. LUDWIG: Join. 22 MS. O'DELL: Seeks expert 23 opinion. 24 BY MR. DUBIN: 25 Q. You can respond.</p>	<p style="text-align: right;">Page 121</p> <p>1 claiming to see around that particle you're 2 calling chrysotile is also present on the 3 round talc plates, correct? 4 MS. O'DELL: Objection. 5 MR. LUDWIG: Objection, asked 6 and answered. 7 MS. O'DELL: Misstates his 8 testimony. 9 BY MR. DUBIN: 10 Q. You can respond. 11 A. I am basing it on my determination 12 from what's around the particle. I do not 13 take into account what's around the talc. 14 Q. Okay. So you don't consider whether 15 or not, because this effect is also on the 16 talc plates, whether it's an artifact of 17 your -- of your analysis? You don't look at 18 the talc plates to see whether you see the 19 exact same effect on the talc plates? 20 MS. O'DELL: Objection; 21 misstates his testimony. It's not what he 22 testified a moment ago. 23 BY MR. DUBIN: 24 Q. Are these talc plates, are those 25 also purple, according to you, if you're</p>

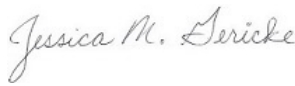
<p style="text-align: right;">Page 122</p> <p>1 looking at the edge effects?</p> <p>2 A. What I am seeing on there is more of</p> <p>3 a red, but it's not in focus to the point that</p> <p>4 I would be able to make a determination.</p> <p>5 Q. So would the refractive -- would the</p> <p>6 refractive index value for those talc plates</p> <p>7 correspond to red?</p> <p>8 MS. O'DELL: Objection.</p> <p>9 He was just saying it wasn't in</p> <p>10 focus and you can't make that determination</p> <p>11 from a photomicrograph on a screen.</p> <p>12 BY MR. DUBIN:</p> <p>13 Q. So are those talc plates -- does the</p> <p>14 refractive index that you assigned to them</p> <p>15 based on their edges, does that correspond to</p> <p>16 red?</p> <p>17 MS. O'DELL: Same objection.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. You can respond.</p> <p>20 A. I would not give it the same.</p> <p>21 THE COURT REPORTER: Please</p> <p>22 repeat your answer.</p> <p>23 MR. LUDWIG: I think it was: I</p> <p>24 would not give it the same.</p> <p>25 I think you were still talking?</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. PLACITELLA: -- trying to</p> <p>2 keep the record clean.</p> <p>3 MR. DUBIN: Okay.</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. What CSDS color are you assigning to</p> <p>6 the talc plates that we're looking at?</p> <p>7 MS. O'DELL: Object to the</p> <p>8 form; that seeks expert opinion. He is not</p> <p>9 a -- he did not analyze these particular talc</p> <p>10 particles. He didn't make findings in the</p> <p>11 report.</p> <p>12 To ask him to do it on the fly,</p> <p>13 in a Zoom is an expert opinion and beyond the</p> <p>14 scope of what he did for the report and we</p> <p>15 object on that basis.</p> <p>16 MR. DUBIN: Are you instructing</p> <p>17 him not to answer the question?</p> <p>18 MR. LUDWIG: I was just going</p> <p>19 to say, exactly, and I am instructing him not</p> <p>20 to answer that question because he is not --</p> <p>21 it's not the scope. Him doing an analysis of</p> <p>22 a talc particle on the fly is not what the</p> <p>23 Judge -- is not the purpose of this</p> <p>24 deposition.</p> <p>25 MR. DUBIN: Okay. You have</p>
<p style="text-align: right;">Page 123</p> <p>1 THE WITNESS: No; that's it. I</p> <p>2 would not give it the same.</p> <p>3 BY MR. DUBIN:</p> <p>4 Q. So what is the CSDS color of, let's</p> <p>5 say, this large talc plate towards the bottom</p> <p>6 left? What is the CSDS color that you would</p> <p>7 use to assign a refractive index to that</p> <p>8 particle?</p> <p>9 MS. O'DELL: Which particle?</p> <p>10 MR. PLACITELLA: I will place</p> <p>11 an objection before he answers and I know</p> <p>12 you're doing the best you can, but at this</p> <p>13 point, at least on the screen that I am</p> <p>14 seeing, this image is pretty blurry, you know,</p> <p>15 but you did -- you're doing the best you can.</p> <p>16 MR. DUBIN: This is the image</p> <p>17 that we have from Dr. Longo.</p> <p>18 MR. PLACITELLA: Well, that's</p> <p>19 not necessarily the image. This is a blowup</p> <p>20 on a Zoom, you know.</p> <p>21 MR. DUBIN: He also has the</p> <p>22 actual report in front of him on a computer.</p> <p>23 Now what?</p> <p>24 MR. PLACITELLA: Just --</p> <p>25 MR. DUBIN: Okay.</p>	<p style="text-align: right;">Page 125</p> <p>1 instructed him not to answer. We'll just deal</p> <p>2 with it in court later.</p> <p>3 Let's look at the second image,</p> <p>4 002.</p> <p>5 MS. O'DELL: Okay. What image</p> <p>6 are you looking at and what page?</p> <p>7 MR. DUBIN: Okay. So, Jake,</p> <p>8 can you give the page? This is the image of</p> <p>9 CSM 002.</p> <p>10 MR. KEESTER: So my PDF is page</p> <p>11 38, but since your report seems to be one page</p> <p>12 less, it will probably be page 37, but it is</p> <p>13 CSM-002.</p> <p>14 MS. O'DELL: Okay.</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. What color is that particle?</p> <p>17 A. Can you zoom in, please?</p> <p>18 Q. Sure.</p> <p>19 A. The particle itself, yellow with</p> <p>20 some pale blue.</p> <p>21 Q. Okay. And do you see that there is</p> <p>22 a rounded talc plate? If you move your eye</p> <p>23 from the top of the two arrows over towards</p> <p>24 the left, there is a rounded talc plate.</p> <p>25 Do you see that?</p>

<p style="text-align: right;">Page 126</p> <p>1 MR. LUDWIG: Objection.</p> <p>2 Once again, you're asking him</p> <p>3 to analyze what you claim to be a talc</p> <p>4 particle on the fly; that calls for expert</p> <p>5 testimony. I am instructing him not to answer</p> <p>6 that question.</p> <p>7 BY MR. DUBIN:</p> <p>8 Q. You said you have done PLM</p> <p>9 dispersion staining analysis for 30 years,</p> <p>10 Mr. Hess?</p> <p>11 A. That is correct.</p> <p>12 Q. Are you not -- are you not able to</p> <p>13 tell me -- to follow over on the image and</p> <p>14 look at this talc plate with me? Is that</p> <p>15 beyond your experience and training?</p> <p>16 MR. LUDWIG: I am going to</p> <p>17 object.</p> <p>18 This is argumentative. His</p> <p>19 experience is under the microscope. So I am</p> <p>20 objecting to the form of the question. It's</p> <p>21 argumentative.</p> <p>22 BY MR. DUBIN:</p> <p>23 Q. Is the particle you're calling</p> <p>24 chrysotile here, is that essentially the same</p> <p>25 color as the talc plates in the image?</p>	<p style="text-align: right;">Page 128</p> <p>1 identification.)</p> <p>2 BY MR. DUBIN:</p> <p>3 Q. You -- for purposes of your</p> <p>4 analysis, you're calling this particle</p> <p>5 somewhere between a magenta and a purple for</p> <p>6 purposes of your analysis, right?</p> <p>7 MS. O'DELL: Just wait a</p> <p>8 minute.</p> <p>9 What particle is this?</p> <p>10 MR. DUBIN: This is the same</p> <p>11 particle, CSM 002.</p> <p>12 BY MR. DUBIN:</p> <p>13 Q. You're calling it somewhere between</p> <p>14 a magenta and a purple for purposes of your</p> <p>15 analysis?</p> <p>16 A. I am calling the edge that I saw.</p> <p>17 Q. You're calling the edge that you saw</p> <p>18 purple and magenta? Is that what you're</p> <p>19 saying?</p> <p>20 A. That is correct.</p> <p>21 Q. The same type of purple or red</p> <p>22 colors that are on the talc plates?</p> <p>23 MS. O'DELL: Object to the</p> <p>24 form.</p> <p>25 MR. LUDWIG: Object to the</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. LUDWIG: Objection, same</p> <p>2 objection. I am instructing him not to</p> <p>3 answer.</p> <p>4 MR. DUBIN: Okay. Can't wait</p> <p>5 to be heard on these. All right.</p> <p>6 BY MR. DUBIN:</p> <p>7 Q. Do you know what -- if we go down</p> <p>8 and we look at the RI value, RI 1.565, do you</p> <p>9 know what color that -- by reporting that</p> <p>10 refractive index value for this particle, do</p> <p>11 you know what color you were calling it?</p> <p>12 A. I don't recall.</p> <p>13 MR. DUBIN: Let's go to the</p> <p>14 slide, Jake, and we'll make that the next in</p> <p>15 order, the slide for this particle; that will</p> <p>16 be exhibit -- are we on 17 or 18?</p> <p>17 THE COURT REPORTER: One moment</p> <p>18 and I can verify.</p> <p>19 MR. DUBIN: Sure. I think it's</p> <p>20 18.</p> <p>21 THE COURT REPORTER: Yes, this</p> <p>22 is Exhibit 18.</p> <p>23 MR. DUBIN: Why don't we call</p> <p>24 up that slide and we can put it in chat.</p> <p>25 (Exhibit 18 marked for</p>	<p style="text-align: right;">Page 129</p> <p>1 form.</p> <p>2 I instruct you not to answer.</p> <p>3 BY MR. DUBIN:</p> <p>4 Q. Do you know -- as you adjust the</p> <p>5 focus on a microscope up and down, do you know</p> <p>6 whether you can -- if things are out of focus,</p> <p>7 you can see a red edge on particles? Are you</p> <p>8 familiar with that?</p> <p>9 A. I have observed that.</p> <p>10 Q. And so one way that you can get</p> <p>11 these types of edges around particles is if</p> <p>12 they are just not -- if they are -- is your</p> <p>13 focus, depending on your focus, right?</p> <p>14 MS. O'DELL: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: Correct.</p> <p>17 BY MR. DUBIN:</p> <p>18 Q. And without these edges, without</p> <p>19 these sort of red colors at the edges, then</p> <p>20 the CSDS color that you would have had to</p> <p>21 assign to the particle would be -- would</p> <p>22 correspond to yellow, right?</p> <p>23 MR. LUDWIG: Objection to form.</p> <p>24 That's calling for an expert</p> <p>25 analysis, which he is not here to present</p>

<p style="text-align: right;">Page 142</p> <p>1 VIDEOGRAPHER: The time is 2 12:38 p.m. We're off the record. 3 (Break held off the record.) 4 VIDEOGRAPHER: The time is 5 1:28 p.m. We are back on the record. 6 BY MR. DUBIN: 7 Q. All right. Well, we'll see. If 8 there is an objection to this as well and this 9 topic, then we'll move on from it, but I need 10 to ask it to make sure. 11 So I put together a slide and I 12 put together some excerpts from the Valadez 13 report just so they are all in one spot for 14 the backup of this slide. 15 We'll mark the backup, which is 16 CX-12, as the next exhibit in order. I guess 17 that's 20? 18 THE COURT REPORTER: If you 19 would like me to check, give me one moment. 20 MR. DUBIN: Sure. Thanks. 21 MR. KEESTER: I believe that's 22 21. 23 MR. DUBIN: Twenty-one. 24 THE COURT REPORTER: I will 25 take counsel's assertion it's 21 without</p>	<p style="text-align: right;">Page 144</p> <p>1 BY MR. DUBIN: 2 Q. Okay. But it is true, Mr. Hess, 3 that when you're calling particles chrysotile 4 in Johnson & Johnson, you're basing that not 5 on the color of the particle that you're 6 seeing, but on the color of the edge effects 7 that you're seeing, right? 8 A. Focused at the edge, this -- the way 9 everything I do is set up initially with the 10 alignment and centering of all the objectives 11 and lenses with the scope, with the 12 illumination lamp full, field diaphragm open, 13 and I scan for a suspicious object. 14 When I focus in on what appears 15 to be suspicious, I first make sure that I can 16 see signs of fibrousity. Then I go back to 17 dispersion staining and I will utilize what's 18 in Dr. Su's paper, looking at the edge, as 19 stated on page 3 and page 5, utilizing what's 20 on page 5, which specifically shows or 21 indicates to me looking at the edge -- 22 Q. Page 5 of what? 23 A. -- specifically says: At particle 24 edge. 25 Q. Page 3 and page 5 of what?</p>
<p style="text-align: right;">Page 143</p> <p>1 checking. 2 MR. DUBIN: Okay. It's 21 3 then. All right. So we'll make that 21 and 4 can you just put it in chat, Jake? 5 MR. KEESTER: Already done. 6 MR. DUBIN: And then the slide 7 which will be 22 and that's slide 48. 8 (Exhibits 21 and 22 marked for 9 identification.) 10 BY MR. DUBIN: 11 Q. I tried to ask you this already, 12 Mr. Hess, but the same type of edge effects 13 that you're relying on to call particles 14 chrysotile in Johnson & Johnson are also 15 present on talc plates in your analysis; is 16 that true? 17 MS. O'DELL: Objection. This 18 is beyond the scope of the deposition and 19 Mr. Hess' testimony. 20 Further, the way that these 21 particles are depicted from who knows what is 22 misleading and not representative of what was 23 actually in the reports. 24 MR. LUDWIG: I will join and 25 instruct the witness not to answer.</p>	<p style="text-align: right;">Page 145</p> <p>1 MS. O'DELL: He is not 2 finished, Morty. 3 BY MR. DUBIN: 4 Q. Sorry. 5 A. And then I -- best I can or I will 6 do everything I can to make sure that what I 7 am seeing is best represented in the 8 photograph that I take and I am not seeing the 9 things on the screen, I use the scope. 10 Q. So are you telling me that in order 11 to understand your work and the calls that 12 you're making, that I -- someone needs to be 13 actually looking through your microscope? 14 MR. LUDWIG: Objection. 15 MS. O'DELL: Objection. 16 BY MR. DUBIN: 17 Q. You can respond. 18 A. No, sir. I am sure there is plenty 19 of the sample available where someone at your 20 client's place can do the same thing. 21 Q. Well, just to understand what the 22 call is that you're making on a particular 23 particle, do I need to be looking through your 24 scope? 25 A. It's documented in the photographs</p>

<p style="text-align: right;">Page 170</p> <p>1 find it if need be.</p> <p>2 MR. DUBIN: Okay. Well, let's</p> <p>3 make sure that we mark it as an exhibit so</p> <p>4 they have the entire report. The full report</p> <p>5 will be 26.</p> <p>6 MS. O'DELL: I want to make</p> <p>7 sure that this report is at issue in the MDL.</p> <p>8 Can you represent to me which report this</p> <p>9 image came from?</p> <p>10 MR. DUBIN: These are all of</p> <p>11 the reference images that Dr. Longo provides</p> <p>12 along with all of these reports as his</p> <p>13 references for his chrysotile findings. These</p> <p>14 are all part of his analysis in -- it's all</p> <p>15 part of the chrysotile analysis that is being</p> <p>16 discussed in these -- in this deposition.</p> <p>17 MS. O'DELL: With due respect,</p> <p>18 Morty, that doesn't mean anything. I mean,</p> <p>19 the question is, is -- is this --</p> <p>20 MR. DUBIN: Dr. Longo is</p> <p>21 relying on these reference images for his</p> <p>22 identification of chrysotile in the reports</p> <p>23 that we are discussing today.</p> <p>24 MS. O'DELL: And I am asking</p> <p>25 you what report does this image come from?</p>	<p style="text-align: right;">Page 172</p> <p>1 Calidria to say there is chrysotile in Johnson</p> <p>2 & Johnson as part of this analysis are somehow</p> <p>3 off limits, but if you're going to take that</p> <p>4 position, you're going to take that position.</p> <p>5 MS. O'DELL: I'm not --</p> <p>6 MR. DUBIN: We'll take --</p> <p>7 MS. O'DELL: -- the position I</p> <p>8 am taking is that you have an image on the</p> <p>9 screen. We have --</p> <p>10 MR. DUBIN: Okay.</p> <p>11 MS. O'DELL: -- no idea where</p> <p>12 it came from --</p> <p>13 MR. DUBIN: (Inaudible.)</p> <p>14 MS. O'DELL: (Inaudible.)</p> <p>15 THE COURT REPORTER: I'm sorry.</p> <p>16 This is the court reporter. Everyone is</p> <p>17 talking at once and I can't hear anything.</p> <p>18 Apologies.</p> <p>19 MS. O'DELL: Jessica, I'm</p> <p>20 sorry. I mean, I am just trying to finish my</p> <p>21 objection.</p> <p>22 We have no idea where this</p> <p>23 image came from. I am just asking -- you're</p> <p>24 saying it's a reference image from Dr. Longo.</p> <p>25 I have no idea of the context and we --</p>
<p style="text-align: right;">Page 171</p> <p>1 That's what I am asking you.</p> <p>2 MR. DUBIN: I will tell you the</p> <p>3 name of the report, but it will be one of</p> <p>4 Dr. Longo's reference image reports that he</p> <p>5 supplies along with the chrysotile finding --</p> <p>6 alleged chrysotile findings from Johnson &</p> <p>7 Johnson.</p> <p>8 MS. O'DELL: Well --</p> <p>9 MR. DUBIN: (Inaudible.)</p> <p>10 MS. O'DELL: -- comes from</p> <p>11 without knowing if it's at issue in the MDL --</p> <p>12 MR. DUBIN: It is at issue in</p> <p>13 the MDL because they are his reference images</p> <p>14 that he is using to compare reference</p> <p>15 chrysotile to the reports that he has produced</p> <p>16 in the MDL. These are his reference images</p> <p>17 that are incorporated in all of his materials.</p> <p>18 MS. O'DELL: I don't --</p> <p>19 MR. DUBIN: Okay. We can take</p> <p>20 a ten-minute break. We'll get the whole</p> <p>21 report and then if you want to still instruct</p> <p>22 him not to answer, then we'll just add it to</p> <p>23 the pile of things, but I really can't see how</p> <p>24 any legitimate argument could be made that the</p> <p>25 reference images that they are relying on for</p>	<p style="text-align: right;">Page 173</p> <p>1 MR. DUBIN: (Inaudible.)</p> <p>2 MS. O'DELL: -- know that</p> <p>3 before the --</p> <p>4 MR. DUBIN: I am telling you</p> <p>5 what the context is now. Because apparently</p> <p>6 he produces them as individual images. He</p> <p>7 doesn't produce them as part of a report, but</p> <p>8 when he is requested to produce the reference</p> <p>9 images that he is relying on to use as a</p> <p>10 reference for chrysotile in 1.560, he just</p> <p>11 produces these images as the standards that he</p> <p>12 is relying on.</p> <p>13 So it's part of the materials</p> <p>14 that he relies on for these reports and his</p> <p>15 conclusions about the chrysotile -- alleged</p> <p>16 chrysotile in Johnson & Johnson.</p> <p>17 MR. PLACITELLA: I hear you --</p> <p>18 I hear you, Morty, but you're not deposing</p> <p>19 Dr. Longo here.</p> <p>20 MR. DUBIN: But these are</p> <p>21 images taken by Mr. Hess.</p> <p>22 MS. O'DELL: Well, and to my</p> <p>23 knowledge -- and I can be corrected on this,</p> <p>24 Morty, but this is not an image that's been</p> <p>25 produced in the MDL in relation to Dr. Longo's</p>

<p style="text-align: right;">Page 174</p> <p>1 testimony.</p> <p>2 MR. DUBIN: I am sure he has</p> <p>3 produced his reference images because he</p> <p>4 always produces his reference images because</p> <p>5 we always request his reference images.</p> <p>6 If you really are going to shut</p> <p>7 me down from asking a question about the</p> <p>8 reference images that were -- that are relied</p> <p>9 on for the reports in this case, then you're</p> <p>10 going -- you're going to do that. You're</p> <p>11 going to make the objection and we're going to</p> <p>12 go and argue about it and I think it is highly</p> <p>13 improper or you could let me ask him a</p> <p>14 question about an image that directly relates</p> <p>15 to his work and that he took.</p> <p>16 MS. O'DELL: Well, we don't</p> <p>17 have -- one, there is no evidence of that and</p> <p>18 second is Mr. Hess is here to testify on the</p> <p>19 reports that are produced in the MDL. Other</p> <p>20 things that Dr. Longo relies on are not at</p> <p>21 issue here for his opinions. So --</p> <p>22 MR. DUBIN: These are the --</p> <p>23 again, these are the images that Dr. Longo</p> <p>24 uses with his reports and the whole purpose of</p> <p>25 this is to ask the person who took the images</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. LUDWIG: And I am going to</p> <p>2 join for the reasons stated and instruct the</p> <p>3 witness not to answer.</p> <p>4 MR. DUBIN: We're going to take</p> <p>5 a ten-minute break. I'll be back.</p> <p>6 VIDEOGRAPHER: The time is</p> <p>7 2:12 p.m. We are off the record.</p> <p>8 (Break held off the record.)</p> <p>9 VIDEOGRAPHER: The time is</p> <p>10 2:26 p.m. We are back on the record.</p> <p>11 MR. DUBIN: So for the record,</p> <p>12 I am going to mark as 26 Dr. Longo's</p> <p>13 deposition in a case called Kayme Clark and</p> <p>14 Dusty Clark v. Johnson & Johnson, where he</p> <p>15 identifies these reference images so that it's</p> <p>16 in the record. We'll put that in as 26. We</p> <p>17 don't have to do anything with it. We're just</p> <p>18 going to put it in the record.</p> <p>19 (Exhibit 26 marked for</p> <p>20 identification.)</p> <p>21 BY MR. DUBIN:</p> <p>22 Q. And then I am going to go back to</p> <p>23 the image and I am going to ask you some</p> <p>24 questions and if you're instructed not to</p> <p>25 answer, you are instructed not to answer.</p>
<p style="text-align: right;">Page 175</p> <p>1 about them.</p> <p>2 I am not going to continue to</p> <p>3 argue with you. If you're going to instruct</p> <p>4 the witness not to answer, go ahead and do it,</p> <p>5 because I think that this deposition has gone</p> <p>6 way off the rails and we're going to have to</p> <p>7 go to the Judge about it. So just do whatever</p> <p>8 you're going to do. I don't want to argue</p> <p>9 with you anymore.</p> <p>10 Are you claiming that you are</p> <p>11 going to stop this person, Mr. Hess, from</p> <p>12 talking about the reference images for the</p> <p>13 alleged chrysotile in Johnson & Johnson? If</p> <p>14 so, instruct him, and let's just have that</p> <p>15 done.</p> <p>16 MS. O'DELL: Judge Schneider</p> <p>17 was very clear as to what was fair game in</p> <p>18 this deposition and those are the reports</p> <p>19 produced in the MDL that involve the new</p> <p>20 method, to my knowledge. And you can correct</p> <p>21 me, but I don't think I am incorrect.</p> <p>22 This is not a part of those</p> <p>23 reports and it's not something that's an</p> <p>24 appropriate scope of this deposition and we</p> <p>25 would instruct the witness not to answer.</p>	<p style="text-align: right;">Page 177</p> <p>1 MR. DUBIN: So can we pull back</p> <p>2 up the Calidria reference image? And I don't</p> <p>3 think that was the page we were on; that was</p> <p>4 one of them.</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. So is this an image that is -- are</p> <p>7 these your PLM images of Calidria 1.560?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And so all this blue stuff in</p> <p>10 the background, that's Calidria?</p> <p>11 A. That is correct.</p> <p>12 Q. Okay. And you're aware that</p> <p>13 Calidria can have impurities in it, too?</p> <p>14 MR. LUDWIG: That's -- I am</p> <p>15 going to object to the form and instruct him</p> <p>16 not to answer; that's beyond the scope.</p> <p>17 MR. DUBIN: Okay.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. Is this image taken at maximum</p> <p>20 illumination?</p> <p>21 A. It was.</p> <p>22 Q. All right. So images on that</p> <p>23 microscope don't get any brighter than this?</p> <p>24 MS. O'DELL: Objection; asked</p> <p>25 and answered.</p>

<p style="text-align: right;">Page 178</p> <p>1 MR. LUDWIG: Join.</p> <p>2 MR. DUBIN: All right. Let's</p> <p>3 make the next exhibit in order, which is 27,</p> <p>4 we'll make it slide 61 -- sorry -- actually,</p> <p>5 slide 95.</p> <p>6 (Exhibit 27 marked for</p> <p>7 identification.)</p> <p>8 MS. O'DELL: I'm sorry. Is</p> <p>9 this exhibit 27?</p> <p>10 MR. DUBIN: Twenty-seven.</p> <p>11 MR. LUDWIG: (Inaudible.)</p> <p>12 THE COURT REPORTER: If you</p> <p>13 just said something, Mr. Hess, I couldn't hear</p> <p>14 you.</p> <p>15 MR. LUDWIG: That was me</p> <p>16 talking to myself. I apologize, Jessica. I</p> <p>17 am simply saying that my exhibit list is</p> <p>18 mis-numbered for some reason.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Are you claiming those two -- those</p> <p>21 two images have the same dispersion staining</p> <p>22 colors?</p> <p>23 MR. LUDWIG: I am going to</p> <p>24 object to the form of the question.</p> <p>25 MS. O'DELL: I object to the</p>	<p style="text-align: right;">Page 180</p> <p>1 objections as made have been proper and</p> <p>2 absolutely consistent with Judge Schneider's</p> <p>3 prior ruling and I will object to any further</p> <p>4 deposition of Mr. Hess.</p> <p>5 MR. DUBIN: Okay. We'll have</p> <p>6 to resolve that. All right. Thanks for</p> <p>7 today. Take care.</p> <p>8 VIDEOGRAPHER: The time is</p> <p>9 2:31 p.m. We're off the record.</p> <p>10 (Witness was excused.)</p> <p>11 (Deposition concluded at</p> <p>12 2:31 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 179</p> <p>1 question.</p> <p>2 MR. LUDWIG: Yeah.</p> <p>3 MS. O'DELL: This is --</p> <p>4 MR. DUBIN: Are you instructing</p> <p>5 him not to answer?</p> <p>6 MS. O'DELL: Yes. This is</p> <p>7 beyond the scope.</p> <p>8 BY MR. DUBIN:</p> <p>9 Q. Have you ever received any criticism</p> <p>10 from NVLAP about your PLM work?</p> <p>11 A. None that I am aware of.</p> <p>12 MR. DUBIN: Okay. At this</p> <p>13 point, you know, I think we're going to have</p> <p>14 to go to the Court. I am going to shut the</p> <p>15 deposition down for the day, but I am not</p> <p>16 agreeing to end it. I think that the</p> <p>17 restrictions that have been placed on me by</p> <p>18 counsels' objections and instructions not to</p> <p>19 answer are improper and we're going to seek</p> <p>20 relief with the Court.</p> <p>21 So I am suspending it for the</p> <p>22 day because I think I am handcuffed, but I</p> <p>23 understand you guys have different opinions.</p> <p>24 So we'll just have to deal with it later.</p> <p>25 MS. O'DELL: Our view is the</p>	<p style="text-align: right;">Page 181</p> <p>1 C E R T I F I C A T E</p> <p>2 I HEREBY CERTIFY that prior to the</p> <p>3 commencement of the examination, PAUL HESS,</p> <p>4 was remotely sworn by me to testify to the</p> <p>5 truth and that the proceedings, evidence, and</p> <p>6 objections are contained fully and accurately</p> <p>7 in the stenographic notes taken by me upon the</p> <p>8 deposition taken on July 10, 2024, and this is</p> <p>9 a true and correct transcript of same.</p> <p>10</p> <p>11</p> <p>12 </p> <p>13</p> <p>14 Jessica M. Gericke, RPR, CCR-NJ,</p> <p>and Notary Public</p> <p>15</p> <p>16</p> <p>17 (The foregoing certification of this</p> <p>18 transcript does not apply to any reproduction</p> <p>19 of the same by any means, unless under the</p> <p>20 direct control and/or supervision of the</p> <p>21 certifying reporter.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>